IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2586 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

AMINA JAMAL & 5 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

==========

Appearance :
MR ND BUCH FOR NANAVATY ADVOCATES for Petitioner(s) : 1,1.2.1 - 6.
MR SATYAM CHAYYA, AGP for Respondent(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 1,
PARTY-IN-PERSON for Respondent(s) : 1,
MR MANOJ SHRIMALI FOR MR GIRISH PATEL for Respondent(s) : 3 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 05/02/2007

ORAL JUDGMENT

1. The short facts of the case are that Entry No.287 dated 03.01.1963 was mutated in the

revenue record for the transaction of purchase of land by deceased Jamal Saru based on unregistered document on Stamp Paper of Rs. 10/- dated 31.05.1958. The said entry continued on revenue record for a long time and in the year 1983, roughly after a period of 20 years, the revision was preferred by Sidi Abdul Basir being No. 14/84 before the Collector and as per the order dated 31.12.1983, the revision was dismissed. The said Sidi Abdul Basir carried the matter before the State Government in the year 1992 and vide order dated 21.02.1997, the said revision came to be allowed by cancelling the Entry No.287 and it is under these circumstances, the present petition.

2. Heard Mr. Buch for Nanavaty Advocate for the petitioners, Mr. Shrimali for Mr. Girish Patel for the contesting respondents who are also added as per the order passed by this Court today in Civil Application No. 1662 of 2007 and Mr. Chayya, learned AGP for the State Authorities.

3. Upon hearing the learned counsel appearing for both the sides, it appears that the entry came to be mutated in the year 1963 and it is not in dispute that for asserting right in the property, two suits filed and were pending, one being No.6/94 and another being No.105/97. The entry remained in the revenue record for a

period of about more than 20 years and therefore, as such, the State Government ought to have relegated the parties to pursue the remedy in the Civil Court and at the most, clarification could have been added for pendency of the proceedings before the Civil Court.

4. It is by now well settled that the revenue entries are having value for fiscal purposes and such entry neither alters the right in the property nor confers the right in the property, which otherwise is not in existence as per the provisions of the Transfer of Properties Act or the relevant law. Further, the revenue authorities are normally not required to adjudicate upon the legality and validity of the transaction pertaining immovable property and in the event such dispute arises, the parties should be relegated to the remedy of the Civil Suit. In the present case, the Suits were already pending and therefore, the entry ought not to have been cancelled but at the most clarification could have been added. The reference may be made to the decision of this Court in the case of Chimmiben WD/O Hirabhai Gopalbhai & Ors. v. State of Gujarat & Ors. reported at 2006(3) GLR 2455.

5. It may be recorded that when the petition was preferred at that stage both the suits were pending. However, the learned advocate appearing

for the private contesting respondents Mr. Shrimali has stated that as per the instructions, Civil Suit No. 105/97 has been disposed off but Civil Suit No. 6/94 is still pending.

6. Under the above circumstances, the appropriate clarification could be made but it was not required for the revenue authority to cancel the entry which was there for a period of about more than 20 years and more particularly, when the Civil Suits were pending between the parties.

7. Therefore, I find that no further discussion is required in this regard since the learned advocates for both the sides have also considered the legal position and has declared before the Court that if Entry No. 287 is allowed to continue in revenue record subject to the clarification of the pendency of the Civil Suit or the decision which may be taken by the Civil Court in the appropriate proceedings, they have no objection for such purpose.

8. Hence, the impugned order passed by the State Government for cancelling the Entry No.287 dated 03.01.1963 shall stand restored to the revenue record with the clarification that for asserting the right in the property, the Civil Suit Nos. 106/94 and 105/97 are preferred and they are pending in the Court of Civil Judge(SD), Veraval, and the rights of the parties shall

stand governed as per the orders which may be passed by the Civil Court in the said suits. It is further clarified that in the event Civil Suit No. 105/97 is disposed of, it would be open to the concerned party to approach before the revenue authorities to enter a new entry based on the decree of the Civil Court in the revenue record.

9. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

(JAYANT PATEL, J.)

*bjoy